



NEW MEXICO COURT OF APPEALS SETS ASIDE IMPROPERLY ENACTED CHIROPRACTIC RULE ON DRUGS

August 1, 2013, Falls Church, Virginia: On July 31, 2013, the New Mexico Court of Appeals issued a ruling and an opinion setting aside a regulation on the list of substances DCs can prescribe and administer which the Court found was improperly enacted by that state's Board of Chiropractic Examiners. The court responded to litigation initiated by the International Chiropractors Association (ICA), at the request of its members in New Mexico who were deeply concerned over the implications of a regulatory board acting outside the law established by the legislature and placing both practitioners and the public at risk.

In a unanimous opinion signed by The Hon. James J. Wechsler, the three-judge panel found:

"We hold that the 2010 formulary that includes minerals and drugs to be administered by injection violates Section 61-4-9.2(B)'s requirement that the formulary receive approval from the Pharmacy and the Medical Board."

ICA, and following ICA's filing of a suit and the obtaining of an injunction against the improperly promulgated formulary, New Mexico's medical and pharmacy regulatory boards, contended from the outset that the Chiropractic Board was acting outside the rules established by the legislature and were thus inappropriately placing practitioners in serious jeopardy and consumers at risk. The justices concluded their opinion by stating:

*Accordingly, we set aside the 2012 formulary. **IT IS SO ORDERED.***

A "formulary" is, according to the Court's ruling, "a listing of the approved substances and includes the manner in which they may be administered. 16.4.15.11 NMAC (11/13/2011)."

The Court, quoting a 1984 case, also stated that:

"An administrative agency has no power to create a rule or regulation that is not in harmony with its statutory authority."

The July 31, 2013 ruling was the culmination of a process that started several years prior to the court's decision. Out of concern for the integrity of the regulatory process and the exposure the New Mexico Board of Chiropractic Examiners' action were creating for

practitioners in that state, on November 14, 2011, ICA filed a notice of its intent to appeal the questionable board rulings on an expanded formulary and on the educational process by which a doctor of chiropractic would qualify for “advanced practice” status. ICA proceeded to file a motion seeking an injunction against the improper formulary rule.

On December 21, 2011 the ICA filed an extensive memorandum in support of a motion to stay what was held to be illegal actions on the part of that state’s Board of Chiropractic Examiners. In its memorandum of explanation, ICA’s attorneys argued that it was important for the court to carefully consider the urgent issues of the letter of the law and the protection of both the public and chiropractic practitioners and prevent the *“New Mexico Board of Chiropractic Examiners from implementing its new rule establishing an advanced practice formulary to include dangerous drugs and drugs to be administered by injection...and implementing its new rules establishing a certain course of training to certify advanced practice chiropractic physicians to administer and prescribe dangerous drugs and drugs to be administered by injection”* because such actions were outside their authority under the law.

On February 15, 2012 such an injunction was issued by a three-judge panel of the New Mexico Court of Appeals. The July 31, 2013 ruling confirms the initial finding of the Court in that stay.

The science and practice of chiropractic has from its very conception been a drugless approach to health. This self-definition as a drug-free healing methodology has been recognized and officially established legislatively in every state statute in the United States, and serves to distinguish the chiropractic from the practice of medicine or other healing arts and professions.

“ICA will continue to closely watch the situation in New Mexico and in other jurisdictions on the issues of drugs in chiropractic,” said ICA President Dr. Michael S. McLean. “For nearly a century the ICA has advocated clear lines of distinction between the health care professions and stood for a drugless, non-surgical national definition of chiropractic. We do this because it is the right thing to do for the chiropractic profession and the public.”

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